



**MINING IN INDIA
&
FOREIGN INVESTMENT**

India Juris

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INTRODUCTION

In order to satisfy a continuously increasing demand from industrial production, agricultural, high tech sectors and merchandise producers in more than 100 countries around the world people are engaged in the mining sector.¹ Among those countries 50 countries can be called mining countries, because of the sector's contribution to export earnings or because it serves large domestic markets or because it employs millions of workers such as in India or China. The mining sector is one of the largest employers in India employing more than one million workers which is around 4% of the Indian workforce.

According to World Bank the mining industry is poised to expand considerably over the next 20 to 30 years. Developing nations like India play an increasingly important role in that expansion on the demand side, as population and economies grow, as well as on the supply side, given shifts in exploration and mining development investments.

India produces as many as 86 minerals, which include 4 fuels, 10 metallic, 46 non-metallic, 3 atomic and 23 minor minerals. The total value of mineral production in India (excluding atomic minerals) during

2009-10 is estimated at Rs.1,27,921.42 crores, which shows an increase of about 4.61% over that of the previous year.

MINING AND FOREIGN DIRECT INVESTMENT: "GOLDMINE OF BUSINESS OPPORTUNITIES"

The Indian government has in a pragmatic manner opened up the mining sector to foreign direct investment in 1993 after the announcement of the new mineral policy to infuse funds, technology and managerial expertise in the sector. The Foreign direct investment policy in the mining sector has been gradually liberalized over the last few years.

In 1997 automatic approval route for investments involving foreign equity participation up to 50% in mining projects and upto 74% in services incidental to mining was introduced. FDI cap for exploration and mining of diamonds and precious stones have been increased to 100% under the automatic route with effect from 10th Feb, 2006.² With this, the Foreign Direct Investment in the mining sector for all non-atomic and nonfuel minerals have now been fully opened upto 100% through the automatic route including diamonds and precious stones.

¹ Treasure or trouble? Mining in Developing countries.
<http://siteresources.worldbank.org/INTOGMC/Resources/treasureortrouble.pdf>

² <http://mines.nic.in/>



The data on FDI in the mining sector for the last three years and in the current year upto September, 2009 are as follows:-

(amount in USD million)*

	2006-07	2007-08	2008-09	2009-10
Mining	6.62	444.26	34.22	86.63
			(April to September 2009)	

*(Source: DIPP)

In the following activities, FDI up to the limit indicated against each activity is allowed/permitted subject to other conditions indicated & security conditions where applicable.³

Activity	% of FDI cap	Entry Route
Mining and Exploration of metal and non-metal ores including diamond, gold, silver and precious ores but excluding titanium bearing minerals and its ores; subject to the Mines and Minerals (Development & Regulation) Act, 1957	100%	Automatic
(1) Coal & Lignite mining for captive consumption by power projects, iron & steel and cement units and other eligible activities permitted under and subject to the provisions of Coal Mines (Nationalization) Act, 1973 (2) Setting up coal processing plants like washeries subject to the condition that the company shall not do coal mining and shall not sell washed coal or sized coal from its coal processing plants in the open market and shall supply the washed or sized coal to those parties who are supplying raw coal to coal processing plants for washing or sizing.	100%	Automatic

Mining and mineral separation of titanium bearing minerals & ores, its value addition and integrated activities subject to sectoral regulations and the Mines and Minerals (Development and Regulation Act 1957)	100%	Government
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India has large reserves of beach sand minerals in the coastal stretches around the country. Titanium bearing minerals viz. Ilmenite, rutile and leucoxene, and Zirconium bearing minerals including zircon are some of the beach sand minerals which have been classified as "prescribed substances" under the Atomic Energy Act, 1962.

FDI for separation of titanium bearing minerals & ores will be subject to the following additional conditions viz.:

- (A) value addition facilities are set up within India along with transfer of technology;
- (B) disposal of tailings during the mineral separation shall be carried out in accordance with regulations framed by the Atomic Energy Regulatory Board such as Atomic Energy (Radiation Protection) Rules, 2004 and the Atomic Energy (Safe Disposal of Radioactive Wastes) Rules, 1987.

³ http://dipp.nic.in/FDI_Circular/FDI_Circular_02of2010.pdf



What will constitute value addition?

For titanium bearing ores such as Ilmenite, Leucosene and Rutile, manufacture of titanium dioxide pigment and titanium sponge constitutes value addition. Ilmenite can be processed to produce 'Synthetic Rutile or Titanium Slag as an intermediate value added product.

The objective is to ensure that the raw material available in the country is utilized for setting up downstream industries and the technology available internationally is available for setting up such industries within the country. Thus, if with the technology transfer, the objective of the FDI Policy can be achieved, the conditions prescribed at (i) (A) above shall be deemed to be fulfilled.

MINING LAW

The Mines and Minerals (Development and Regulation Act, 1957, ('**MMDR**'), the Mineral Concession Rules, 1960, The mineral conservation and development rules, 1988, the granite conservation and development rules, 1999 and the marble development and conservation rules, 2002 together with the rules and regulations framed under them, constitute the basic laws governing the mining sector in India.

The **MMDR** outlines the procedures and conditions for obtaining a reconnaissance

permit, Prospecting Licence or Mining Lease. It also contains rules regarding the development of minerals, reconnaissance operations, prospecting operations or mining operations along with environmental protection rules. Some of the important aspects of the **MMRD** are described below in the form of FAQs.

Can foreign nationals/companies get a reconnaissance permit, prospecting license or mining lease?

Section 4-9A contains general restrictions on undertaking reconnaissance, prospecting and mining operations.

Section 5(1) prohibits state government from granting a [reconnaissance permit, prospecting licence or mining lease] to any person unless such person is:

- an Indian national,
- or a Company as defined in sub-section (1) of Section 3 of the Companies Act, 1956.

A person shall be deemed to be an Indian national, in the case of a firm or other association of individuals, only if:

- all the members of the firm or members of the association are citizens of India;
- and in the case of an individual, only if he is a citizen of India.



What is the Period for which reconnaissance permits or prospecting licenses may be granted or renewed: 7(1) and (2)

The period for which a reconnaissance permit or prospecting licence may be granted shall not exceed three years

- Prospecting licence may be renewed for such period or periods as that Government may specify though the total period for which a prospecting licence is granted should not exceed five years

What is the Period for which mining leases may be granted or renewed: 8(1) and (2)

- The maximum period for which a mining lease may be granted shall not exceed thirty years though the minimum period for which any such mining lease may be granted shall not be less than twenty years.
- A mining lease may be renewed for a period not exceeding twenty years.

What is the Royalty in respect of mining lease and can they change: 9(2) and 9(3)

- The Second schedule specifies the rates of royalty in respect of each mineral in all states and union territories except the state of west Bengal.

- The Central Government may enhance or reduce the rate at which royalty shall be payable in respect of any minerals with effect from such date as may be specified in the Notification

What is the Dead Rent to be paid by lessee and can they change: Section 9A(1)

- The holder of a mining lease shall pay to the State Government, every year, dead rent at such rate as may be specified, for the time being, in the Third Schedule, for all the areas included in the instrument of lease.
- The third schedule gives the rates of dead rent in rupees per hectare per annum for low value, medium value, high value and precious metals.
- Under Section 9A(2) of the Act, the Central Government may, by notification in the official Gazette, amend the Third Schedule so as to enhance or reduce the rate at which the dead rent shall be payable in respect of any area covered by mining lease.

MINING: REHABILITATION AND ENVIRONMENT

By its very nature, the mining industry leaves behind a "footprint" – an environmental, social, and economic impact. Mining is one of the most environmentally degrading



industries. The adverse environmental impacts of mining operation commence with mineral exploration, extend through extraction and processing and often continue post closure of the operation. Land degradation, large scale denudation of forest cover and depletion of biodiversity, pollution of air, water and soil and degradation of agricultural land are some of the serious environmental implications of the mining activity.

Though the applications for mining lease are made to the State government section 18(1) states that it shall be the duty of the Central Government to take all such steps as may be necessary for the conservation and systematic development of minerals in India.

Further, the statute authorizes the central government to protect the environment by preventing or controlling any pollution which may be caused by prospecting or mining operations.

In a landmark decision, the Indian environment ministry blocked Vedanta's mining project in Orissa because the forest-hills it would have destroyed are intertwined with the lives and livelihoods of local primitive tribes. Similarly, the Union environment ministry has directed the state of Orissa to stop work on the Korean steel giant POSCO's plant due to violation of Forest Rights Act.

RECENT DEVELOPMENTS

Of Late, there has been an emphasis by the government of India to ensure that the legal license to mine is accompanied by a social license to mine.

A draft Bill, Mines and Minerals (Development and Regulation) Bill 2010 envisages the setting up of a National Mining, Tribunal which can check independently, all decisions, indecisions and delays in its application. It further proposes that if the State Government wants to grant forest area for mining, consultation is declared mandatory with panchayats in tribal areas.

One of the amendments to mining law proposes that 26% of the profits from mining should be shared with people who are displaced because of the projects. If the companies don't make profits, they will need to pay an amount equal to mining royalties to displaced people.

FUTURE PROSPECTS

Clearly, the mining sector in India is an alluring venture with the government leaving no stone unturned to make it investor friendly. However, there are proposed amendments and decisions in the pipeline which may have far reaching consequences for potential investors. The mining sector is encountering stupendous



growth. The contribution of mining and quarrying sector to GDP in 2009-10 (April-September) at Rs. 31,808 crore indicated an increase of 8.7% over that in the preceding period.⁴ Clearly, mining is an exciting sector for potential investors to venture into in India.

HOW INDIA JURIS CAN ASSIST POTENTIAL INVESTORS

India Juris can provide legal, regulatory and business advisory assistance to Indian and foreign private sector companies and independent contractors. Our Services in mining sector can be summarized broadly as under:

- Developing structure and roadmap for entry into the mining sector.
- Assistance in procuring mining lease, prospecting license and reconnaissance permit for potential investors.
- Get approvals for various operations such as prospecting, reconnaissance and mining from the Central and State Government.
- Get environmental clearance certificate from the Ministry of environment and forests.

- Setting up of the Companies, Subsidiary, Liaison/ Branch Office in India.
- Joint Ventures / Collaboration / MoUs / Strategic alliances in mining sector.
- Liaisoning with governmental authorities.
- Taxation
- Repatriation and remittance of money and other legal services not included here.

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⁴ <http://mines.nic.in/>